



Department of Justice
Canada

Ministère de la Justice
Canada

INTERNATIONAL ASSISTANCE GROUP



CENTRAL AUTHORITY
FOR CANADA FOR MUTUAL
LEGAL ASSISTANCE AND EXTRADITION

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Introduction

“The new electronic interdependence recreates the world in the image of a global village.”

Marshall McLuhan
(1962)

With advances in technology and the ease of global travel, the world we live in has become in many ways, as Canadian author Marshall McLuhan predicted, a single community. This has had a dramatic impact on many aspects of life and society, and law enforcement is no exception.

Transnational crime is a growth industry. Criminals, too, have access to enhanced methods of travel and communication through which they can flee from detection and prosecution and conceal the evidence of and profits from their crimes. As criminals continue to perfect their techniques and are quick to take advantage of national boundaries to shield themselves from justice, law enforcement authorities throughout the world must unite to combat this common threat.

Extradition and Mutual Legal Assistance are two important mechanisms through which the global community can achieve this goal. Canada is committed to these and other forms of international cooperation in criminal matters. This booklet reflects that commitment. It provides practical information to the authorities of other states, which can be used to obtain assistance from Canada with respect to the return of fugitives or the gathering of evidence for criminal cases.

The purpose of this booklet is to describe the structure, purpose and operations of the International Assistance Group of the Department of Justice, and to outline how states can obtain extradition and mutual legal assistance from Canada.

Central Authority for Canada for Mutual Legal Assistance and Extradition

“The investigation, prosecution and suppression of crime for the protection of the citizen and the maintenance of peace and public order is an important goal of all organized societies. The pursuit of that goal cannot realistically be confined within national boundaries. That has long been the case, but it is increasingly evident today.”

*United States of America
v. Cotroni*, [1989] Supreme Court
of Canada

I. The International Assistance Group

The Minister of Justice is the central authority for Canada for both extradition and mutual legal assistance matters. The International Assistance Group (IAG), created in 1988, is part of the Department of Justice's Criminal Law Branch, which is headed by the Assistant Deputy Attorney General (ADAG), Criminal Law. The IAG was established to carry out functions assigned to the Minister of Justice as central authority under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act* and to provide advice to the Minister on his or her responsibilities under these

statutes. The group is also responsible for reviewing and coordinating extradition and mutual legal assistance requests. All requests for extradition and mutual assistance made to or by Canada are coordinated by the IAG.

On a day-to-day basis, the IAG helps foreign and domestic authorities gather evidence for criminal cases or obtain the extradition of fugitives for prosecution or to serve a sentence.

Under the authority of the ADAG, Criminal Law, the IAG develops policy on extradition and mutual legal assistance, in consultation with other branches of the Department of Justice and other interested government departments. As well, it participates in the negotiation of extradition and mutual legal assistance treaties.

The IAG deals only with requests for assistance in criminal matters. Civil matters are handled through the Department of Foreign Affairs and International Trade or the Constitutional and International Law Section of the Department of Justice.

II. Extradition and Rendition

Canada's domestic legislation dealing with the extradition of fugitives is embodied in two acts: the *Extradition Act* and the *Fugitive Offenders Act*. Canada can extradite both citizens and non-citizens.

THE EXTRADITION ACT

The *Extradition Act* provides the domestic legal framework for extradition to and from Canada.

The Minister of Justice has the exclusive authority to decide whether to surrender fugitives to states requesting their extradition. The Minister also presents requests for the extradition of fugitives from abroad.

a) Extradition to Canada

The IAG acts on behalf of the Minister in seeking the extradition of fugitives from foreign states. At the request of the prosecution or correctional authorities in Canada, the IAG will seek the provisional arrest and the extradition of a fugitive found outside Canada.

Interpol Ottawa may issue red circulars to be disseminated to states which are members of Interpol. These circulars name fugitives to be arrested for the purpose of extradition. The competent Canadian authority (i.e., prosecution or correctional service) authorizes the issuing of the red circu-

lars, which are then approved by the IAG before circulation .

b) Extradition from Canada

Canada may extradite a fugitive to a requesting state only if there is a treaty or arrangement to that effect with that state, except where the *Fugitive Offenders Act* applies or where a state has been specifically designated under Part 2 of the *Extradition Act*. (Such designations are rare and must have been made before the offence for which extradition is sought was committed. Canada has designated only three countries under Part 2 to date.)

Canada is currently party to 50 bilateral extradition treaties. As well, Canada is party to a number of multilateral conventions that contain provisions allowing for extradition. (See the list in the Appendix.) Several additional treaties are at various stages of negotiation or awaiting ratification.

Requests for extradition or for the provisional arrest of fugitives (in urgent cases) must be received through the channels prescribed by the relevant treaty – directly between justice departments, through diplomatic channels, or in some instances through Interpol. Once received, these requests and their supporting documents are examined by the IAG to make sure they are complete and conform to the treaty.

If necessary, the IAG will ask for additional information or evidence.

After review, the documentation is transmitted to the regional office of the Department of Justice responsible for the area where the fugitive is located.

An agent of the Attorney General of Canada, usually from that regional office, will represent the requesting state in the extradition proceedings. This includes obtaining the arrest warrant from the competent Canadian judicial authority and taking part in the extradition hearing and any appellate or judicial review.

At the first stage of the extradition process there is a hearing at which the fugitive will generally appear with counsel.

At this hearing, the extradition judge must determine whether the evidence submitted in support of the request reveals conduct that would amount to an extradition offence and is sufficient to warrant a trial in the requesting state. If so, the judge will order the fugitive's detention, pending the Minister's decision on surrender. Otherwise, the fugitive will be discharged.

Subsection 25(1) of the *Extradition Act* gives the Minister the authority to order the surrender of the fugitive to the requesting state in accordance with the applicable treaty. The Minister's decision must respect the

fugitive's rights guaranteed by the *Canadian Charter of Rights and Freedoms* (see below).

The IAG advises the Minister via the ADAG, Criminal Law, on the surrender of fugitives, but each case is decided by the Minister personally.

The IAG also helps make arrangements for the actual surrender of the fugitive to the foreign state's authorized agents.

THE FUGITIVE OFFENDERS ACT

The *Fugitive Offenders Act* allows for the rendition of fugitives by Canada to states which are part of the Commonwealth and recognize the Queen as Head of State. No treaty is required, but the offence in question must be punishable in the requesting state by imprisonment with hard labour for a term of one year or more, or by any greater punishment. Requests for rendition are usually received by Canada through the diplomatic channel, although the requests may be sent directly to the IAG where there is an agreement to do so. Requests for provisional arrest are normally routed through Interpol to the IAG.

Counsel within the IAG review the requests submitted to see whether they conform to legislative requirements and the evidence is sufficient. The process for rendition from Canada has two stages. First, the case is submitted to a competent judicial

authority (magistrate or provincial court judge), who holds a hearing, at which the fugitive appears, generally with counsel.

Counsel from the regional office of the Department of Justice usually appear on behalf of the requesting state. The judge reviews the evidence submitted by the requesting state and must be satisfied that it raises a strong or probable presumption that the fugitive committed the offence. If the judge is convinced, a committal order will be issued.

The Governor General then must decide on surrender. The Governor General receives recommendations from the Deputy Minister of Justice on the issue, based on legal advice provided by the IAG.

Provisional arrest is available in a manner similar to that described above in cases under the *Extradition Act*.

III. Mutual Legal Assistance in Criminal Matters

REQUESTS FOR MUTUAL LEGAL ASSISTANCE FROM CANADA

The Minister of Justice is the Canadian central authority for all mutual legal assistance treaties. As the Minister's delegate, the IAG serves as the Canadian central authority through which all requests for mutual legal assistance from Canada to foreign states

are presented. The IAG is responsible for reviewing all requests to ensure they comply with treaty provisions and any other international standards that may be applicable. This includes a review of both substance and form. Requests may be submitted to the IAG from either Canadian law enforcement agencies or Canadian prosecution authorities.

Once approved by the IAG, the request is presented directly to the foreign central authority in matters involving treaty partners, or through the diplomatic channels in other instances.

(For more details, see the Department's publication *Law Enforcement in the Global Village*, 1990.)

REQUESTS FOR MUTUAL LEGAL ASSISTANCE TO CANADA

Foreign states can request assistance from Canada in gathering evidence for criminal matters through three different routes:

- treaty and convention requests,
- letters rogatory, and
- non-treaty requests.

The fullest assistance can be provided for treaty or convention requests. More limited assistance is available for letters rogatory and non-treaty requests. The three different mechanisms are summarized briefly below.

a) Treaty requests

OVERVIEW

In 1988, Canada enacted the *Mutual Legal Assistance in Criminal Matters Act*. This Act is the domestic legislation for implementing Canada's mutual legal assistance treaties in criminal matters. The Act may be applied only in relation to requests submitted to Canada under treaties, multilateral conventions or special arrangements. It gives Canadian courts the power to issue compulsory measures in Canada or to gather evidence for a criminal investigation in a foreign state or to locate a fugitive on the basis of a request made under a treaty, convention or arrangement. The legislation allows for assistance to be rendered at any stage of a criminal matter, from investigation to appeal.

ROUTING OF REQUESTS

Counsel within the IAG coordinate and where possible, arrange for the execution of requests from foreign states.

TYPES OF ASSISTANCE AVAILABLE

The Canadian mutual assistance legislation deals with the following types of assistance:

- search and seizure;
- evidence gathering orders for testimony from persons or production of documents and things for use in a foreign state;
- lending of evidence;

- enforcement of foreign fines; and
- temporary transfer of detained persons to testify or assist.

In addition, service of documents, production of public documents, voluntary interviews and other non-compulsory types of assistance may be requested under a treaty. These may be provided by Canadian authorities without resort to the legislation.

REQUESTS

For the most common types of assistance (production orders and search warrants), a Canadian court must be satisfied that there are grounds to believe that an offence has occurred over which the foreign state has jurisdiction, and that evidence of the commission of the offence will be found in Canada, before it will issue an order. The request should set out sufficient information for the Canadian judge to be satisfied on these two points.

Each of the treaties specifies the information required in a request for assistance. In general terms, a request for assistance to Canada should include:

- a summary of the facts of the case under investigation or prosecution, including a clear indication of how the assistance requested is relevant to the alleged offence;
- the text of the offences alleged in the requesting state;

- a description of the evidence sought, including any specific procedures to be applied during the process (e.g. list of questions, form for certification of documents, if required by the requesting state);
- time limitations facing the requesting state;
- any special confidentiality requirements; and
- any other information that might allow Canadian officials to identify and provide the evidence requested.

Requests should be made in writing in either French or English. In extraordinary cases, where the treaty permits, verbal requests may be accepted.

PROCEDURE IN CANADA

Requests for assistance are reviewed by the IAG to ensure they comply with the treaty. A formal approval is issued by the Minister of Justice, through designates in the IAG, for each request that is accepted by Canada. The request is then forwarded by the IAG to the appropriate Canadian authority for execution. Canadian authorities will take steps to provide the assistance requested, in accordance with Canadian domestic legislation. Canada will also arrange for both legal counsel and police to carry out the request for assistance.

b) Letters rogatory

OVERVIEW

This mechanism requires two essential conditions: that there be a criminal matter pending before a foreign judge, court or tribunal and that the foreign judicial body wishes to obtain the evidence sought. It is important that these be clearly stated in the letter rogatory. In addition, it is helpful to include information that indicates how the evidence sought is relevant to the foreign proceeding.

No treaty is required for this procedure; it is a discretionary provision. Unlike mutual legal assistance requests, which are often used at the police investigation stage, letters rogatory can be issued only when there is a criminal matter pending before a foreign court.

Section 46 of the *Canada Evidence Act* allows for some compulsory measures to be issued by a Canadian court in response to a request from a foreign state emanating from a judge, court or tribunal of a foreign state (letter rogatory). Witnesses can be compelled to appear and testify before the foreign judicial authority and must produce any relevant documents requested. No other compulsory measures are available.

ROUTING

Letters rogatory may be sent directly to the IAG for execution or may be submitted through the diplomatic channel. These letters should not be sent to provincial attorneys general or directly to a Canadian judge.

PROCEDURE

The IAG will review the letters rogatory and obtain any additional information from the foreign state. The letter will then be sent to a competent authority in the relevant province for execution.

c) Non-treaty requests

Canada does what it can to help those countries with whom it has no treaty relationship. However, assistance is limited to voluntary aspects, since no compulsory measures are available where there is no treaty.

Non-treaty requests should be forwarded through the diplomatic channel or sent directly to the IAG.

Canada will try to carry out requests seeking voluntary investigative assistance (e.g. taking voluntary statements from persons or serving documents), by referring the matter to the federal police force, the Royal Canadian Mounted Police.

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Canadian Charter of Rights and Freedoms* is a part of the constitution, which is the supreme law of Canada. The Charter guarantees certain rights and freedoms.

Any actions taken by Canadian authorities in relation to a foreign request will be governed by the Charter. The most relevant provisions are the following:

- sections 8 and 9: the right of any person to be secure against unreasonable search and seizure and not to be arbitrarily detained or imprisoned
- section 10(b): the right to counsel upon arrest or detention
- section 11 (c): the right of any person charged with a criminal offence not to be compelled to be a witness in proceedings against him or her in respect of that offence
- section 13: the right of any person not to have any incriminating evidence given in a proceeding used against him or her in any other proceeding, except in cases of false testimony

These last two sections are of particular note, since in many other legal systems suspected and charged persons can be required to make statements.

This is not constitutionally permissible in Canada, and thus it may not be possible for Canada to execute a request from a foreign state which seeks evidence from a suspected or accused person, other than that which can be obtained voluntarily.

For more information on mutual legal assistance and extradition to or from Canada, please contact:

**The International Assistance Group
Department of Justice
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Ottawa, Canada
K1A 0H8**

Fax: (613) 957-8412

Appendix: Conventions and Treaties

Multilateral conventions to which Canada is a party

The International Convention for the Suppression of the White Slave Traffic, July 3, 1906, Protocol with Annex amended May 4, 1949

The Convention for the Suppression of the Unlawful Seizure of Aircraft, Done at the Hague, December 16, 1970

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal, September 23, 1971

The Convention on the Prevention and Punishment of Crimes against internationally protected persons, including Diplomatic Agents, Done at New York, December 14, 1973

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Done at New York, December 10, 1984

The Convention on the Physical Protection of Nuclear Material, Done at New York and Vienna, March 3, 1990

The International Convention Against the Taking of Hostages, Done at New York, December 18, 1979

1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, November 14, 1990

Mutual Legal Assistance Treaties in force as of March 1995

Agreement between the Government of Canada and the Government of Hong Kong concerning investigation of drug trafficking and confiscation of the proceeds of drug trafficking (November 14, 1990)

Canada–United States (January 24, 1990)

Canada–Australia (March 14, 1990)

Canada–Bahamas (July 10, 1990)

Canada–Mexico (October 21, 1990)

Canada–France (May 1, 1991)

Canada–Netherlands (May 1, 1992)

Canada–United Kingdom (September 17, 1993)

Canada–Thailand (October 3, 1994)

Canada–Korea (February 1, 1995)

Canada–Spain (March 3, 1995)